

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

DWIGHT KEITH SMITH,)	
)	
Petitioner,)	ACTION NO. 1:04cv774 (GBL/TCB)
)	
v.)	ORDER ON PETITION FOR
)	WRIT OF HABEAS CORPUS
GENE M. JOHNSON,)	
)	
Respondent.)	

ORDER

The petitioner filed a verified petition in this court on June 22, 2004, for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court issued an initial show cause order to respondent who filed a Motion to Dismiss and Rule 5 Answer to the petition on January 18, 2005. Neither party requested an evidentiary hearing on the petition, and the Court finds that a hearing is not necessary as this petition raises no genuine issue of material fact. See 28 U.S.C. § 2243.

For the reasons provided in the accompanying Memorandum Opinion, respondent's Motion to Dismiss must be denied and petitioner's petition granted. In summary, it appears to the Court that petitioner was convicted of consensual sodomy in violation of the federal Constitution and is therefore entitled to the writ of habeas corpus.¹ Therefore,

IT IS ORDERED that respondent's Motion to Dismiss is denied.

IT IS FURTHER ORDERED that the petition is granted.

¹ The granting of the writ, however, has no immediate effect on petitioner's current detention and therefore release from confinement would not be appropriate at this time. To the extent that petitioner's convictions for consensual sodomy resulted in his current detention, appropriate relief may be pursued in state court in light of the Court's granting of the writ of habeas corpus.

IT IS FURTHER ORDERED that the clerk is directed to issue a writ of habeas corpus commanding respondent to discharge petitioner's parole supervision and any restraints imposed by his parole from his two convictions for consensual sodomy in the Circuit Court for Shenandoah County (Nos. CR95-231, CR95-232).

The Clerk is DIRECTED to send a copy of this Order and accompanying Memorandum Opinion to petitioner and to respondent's counsel of record.

ENTERED this 20th day of JUNE, 2005.
Alexandria, Virginia

_____/s/
Gerald Bruce Lee
United States District Judge